

JAMES F. GIANCARLO

IBLA 78-534

Decided September 22, 1978

Appeal from a decision of the California State Office, Bureau of Land Management, returning unrecorded a notice of location of a mining claim. CA MC 13903.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally—Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment—Mining Claims: Recordation

Under section 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

APPEARANCES: James F. Giancarlo, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James F. Giancarlo appeals from the June 23, 1978, decision of the California State Office, Bureau of Land Management, which returned his mining claim location notice for the Mejar aro pais placer mining claim because it had not been filed within 90 days after the date of location (March 18, 1978), as required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Examination of the location notice shows that it was received in the Bakersfield District Office, BLM, June 20, 1978, and in the California State Office, June 23, 1978. The copy of the location notice does not contain any reference to book and page of the county or other public records of the notice of location.

Appellant states:

I had filed the required documents, original with Kern County Recorder and copies with the department of the interior [sic], which were received by them on June 12, 1978. However, they were returned to me for lack of signature. I signed the placer location notice and returned it on June 17, 1978. It was subsequently recorded on 6/21/78 Book 5119 Page 1085. Copies are hereby enclosed.
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The appeal was accompanied by a copy of the location notice identified as having been recorded in Kern County Records, Book 5119, Page 1085, on June 21, 1978.

Section 314, FLPMA, requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, within 90 days after the date of location of such claim to file in the office of BLM designated by the Secretary of the Interior a copy of the official record of the notice of location, and provides that the failure to file such instrument shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Mejar aro pais mining claim was located March 18, 1978, so that it was necessary to file in the proper office of BLM on or before June 16, 1978, a copy of the official record of the location notice. "File," as used in the context of section 314, FLPMA, means that the location notice must be received and date stamped in the proper BLM office. The regulations implementing sec. 314, FLPMA, are in 43 CFR Part 3833. Section 3833.1-2(c)(2) requires, inter alia, that the copy of the location notice filed with BLM must show the book and page of the county record where the notice has been recorded, and section 3833.4 provides that failure to file the required instruments within the time period prescribed in section 3833.1 shall be deemed conclusively to constitute an abandonment of the mining claim.

1/ It is not clear that a copy of the location notice was filed with any office of BLM prior to June 20, 1978, the date on which the subject notice was received by the Bakersfield District Office. In any event, filing the recordation documents in a BLM district office, rather than in the proper State Office, does not constitute timely recordation. Irwin W. Sweeney, 34 IBLA 205 (1978).

[1] The California State Office, BLM, correctly refused to accept the copy of the location notice of the Mejar aro pais mining claim received by that office on June 23, 1978, because more than 90 days had elapsed since the date of location of the claim. Further, we note that that copy of the location notice could not have been accepted for filing, even during the 90-day period following date of location, because the notice did not show any reference to book and page of the county records for the county in which the claim is situated.

There is no provision for any waiver of the filing requirements either in the Act or in the implementing regulations. Southwestern Exploration Associates, 33 IBLA 240 (1977). A mining claim located after October 21, 1976, for which a notice has not been filed within 90 days from the date of location is void. Solicitor's Opinion, M-36889, 84 I.D. 188 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

